

Deposition of Ray Wear - Taken July 26, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

W.A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA)

Plaintiffs,)

vs.)

4:05-CV-00329-TCK-SAJ

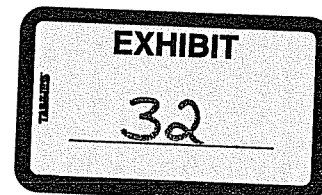
TYSON FOODS, INC., et al.,)

Defendants.)

VIDEOTAPED DEPOSITION OF RAY WEAR

Taken at the law offices of Mitchell, Williams,
Selig, Gates & Wooyard, 5414 Pinnacle Point Drive, Suite
500, Rogers, Arkansas 72758, on July 26, 2007, at 9:44
a.m.

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1 could get one of them.

2 MR. RIGGS: Oh. It went the other way,
3 didn't it?

4 Q. (Mr. Riggs continued.) Have you seen Exhibit 2
5 before, Mr. Wear?

6 A. Yes, sir.

7 Q. Can you tell us what it is?

8 A. It's Organizational Chart, Peterson Farms.

9 Q. Okay. It doesn't have anywhere on it, that I see,
10 the name Peterson Farms, Inc., but it is the
11 organizational chart for Peterson Farms, Inc. Correct?

12 A. Yes, sir.

13 Q. It doesn't have a date on it. Would you look at
14 each block there which has a name or -- or a title or a
15 position and tell me if those are all still current as of
16 today's date?

17 A. No, sir, it is not.

18 Q. What changes would need to be made to make that
19 chart current? Do you mind, would you write on -- on the
20 exhibit itself what the changes would be or the names?
21 And would you tell me as you do that the changes you're
22 making?

23 A. Okay. Dennis Martin is no longer here with us. Nor
24 is Rodney Dunnam, Nor is Kerry Kinyon.

25 Q. Who --

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1 A. Now, I --

2 Q. I'm sorry. Who occupies those three positions?
3 Let's cover that right now.

4 A. Dennis, Blake Evans is -- assumed Dennis' position.
5 We have not filled that position.

6 Q. Okay.

7 A. Purchasing & LP Gas, we've really not filled that
8 position. We have -- well, purchasing, Lorraine Togal is
9 over it. But Blake Evans is still, basically, over all
10 those other positions.

11 Q. So nobody has replaced Kerry Kinyon --

12 A. No.

13 Q. -- as such? Okay. Would any other changes need to
14 be made to make that chart current?

15 A. I would say not.

16 Q. Okay. Does Peterson Farms have a parent
17 corporation?

18 A. No, sir.

19 Q. Does it have subsidiaries?

20 A. It's one subsidiary which is Peterson LP Gas.

21 Q. So they are in the LP gas business, I take it?

22 A. Yes.

23 Q. Is that all the business they are in?

24 A. Other than poultry growing, we do have a retail
25 goods store. That's a division of Peterson Farms.

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1 Q. So those two boards are comprised of exactly the
2 same people?

3 A. Yes.

4 Q. And they have the same chief executive officer.

5 A. Yes.

6 Q. When Peterson Farms, Inc. contracted with growers,
7 did it impose certain requirements on the growers with
8 respect to the size and design of the houses the chickens
9 owned by Peterson were to be raised in?

10 MR. McDANIEL: Object to the form.

11 THE WITNESS: That would really be Kirk's
12 area, would it not?

13 MR. McDANIEL: If you're asking as a matter
14 of contract and you can answer the question, go ahead.

15 A. On contract --

16 Q. (Mr. Riggs continued.) It could be yours or his,
17 but tell me what you know, if you will.

18 A. We do not require a certain -- a certain size house,
19 no.

20 Q. But you would not contract with a prospective grower
21 if that grower had a house that was not to your
22 expectations, with respect to the design and size.
23 Correct?

24 A. Yes, we would.

25 Q. Well, there's a limit to how small a house you would

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1 want to contract.

2 A. Within limits, yes.

3 Q. All right. Can you tell me in general what your
4 expectations are that -- and I'm -- I'm speaking of
5 Peterson Farms, Inc. when it had contracted growers, what
6 your expectations were with respect to the size and design
7 of grower houses?

8 A. At that time, I believe it was a 40 by 400 foot
9 house.

10 Q. Did Peterson, when it contracted with the growers to
11 raise broilers, determine the number of birds that would
12 be raised in -- in each house?

13 A. Yes.

14 Q. Did it determine the kind of chickens the grower was
15 provided?

16 A. Yes.

17 Q. Did it determine the age the chickens were at the
18 time they were delivered to the grower?

19 A. Yes.

20 Q. And it decided when the chicks would actually be
21 delivered to the grower with each flock. Correct?

22 A. Yes.

23 Q. Did Peterson, when it contracted with the grower to
24 raise broilers, have requirements with respect to the
25 types of feeders and waterers the grower would use?

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1 Was that change negotiated?

2 A. No.

3 Q. Rather than go through all of these changes, let me
4 just simply ask, were any of the changes between the old
5 contract and the new contract negotiated with the grower?

6 A. No.

7 Q. Were any terms under any contracts Peterson ever had
8 with any of its growers negotiated with the individual
9 grower?

10 MR McDANIEL: Object to the form.

11 A. Not to my knowledge.

12 Q. (Mr. Riggs continued.) Since Evans & Evans has been
13 in the position you've told me about, have any of the
14 contracts -- terms been negotiated with any of the
15 growers?

16 A. No.

17 Q. All of the growers who are under contract to
18 Peterson Farms or Evans & Evans who raise broilers raise
19 them under the same contract terms.

20 A. Yes.

21 Q. So there are no separate contracts for any
22 individual growers. Correct?

23 MR. McDANIEL: Object to the form.

24 A. I believe there is now.

25 Q. (Mr. Riggs continued.) Tell me about those.

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1 A. I'm not familiar with that, if there was.

2 Q. There was a communication also that required them to
3 have alarm systems. Do you remember that?

4 MR. McDANIEL: I'm going to object to the
5 form.

6 Q. (Mr. Riggs continued.) Okay. This might be out of
7 your area anyway.

8 A. It's -- it's really not in my area.

9 Q. Okay. That would be Mr. Houtchens?

10 A. Yes.

11 Q. Any questions about how growers are paid for their
12 work, would that be Mr. Houtchens' area?

13 A. No. That's in the contract.

14 Q. Okay. Are any of those terms regarding how payment
15 is to be calculated negotiated with the grower?

16 A. No.

17 Q. So the grower couldn't negotiate a different method
18 of payment?

19 A. No.

20 Q. Could he negotiate the price he's charged for the
21 feed?

22 A. No. All growers are charged the same amount.

23 Q. They don't negotiate that amount?

24 A. No.

25 Q. Could a grower negotiate to be allowed to have

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1 higher temperatures in his house to save himself money?

2 MR. McDANIEL: Object to the form.

3 A. That's more Kirk's area there. I -- I'm not a
4 chicken grower.

5 Q. (Mr. Riggs continued.) Okay. He can't negotiate
6 who owns the dead chickens, can he?

7 A. No.

8 Q. He can't negotiate the ingredients in his feed?

9 A. No.

10 Q. Can he negotiate who has responsibility for the
11 poultry litter produced in the growing operation?

12 A. No.

13 Q. Has that ever been negotiated with any grower?

14 A. It's -- not to my knowledge, no.

15 Q. So if Mr. King, on Exhibit 23, is the person who
16 wrote the note, "Do not agree," and made the arrow over
17 to, "shall be responsible for the litter," he could not
18 have negotiated that agreement with you.

19 A. That is correct.

20 Q. The company.

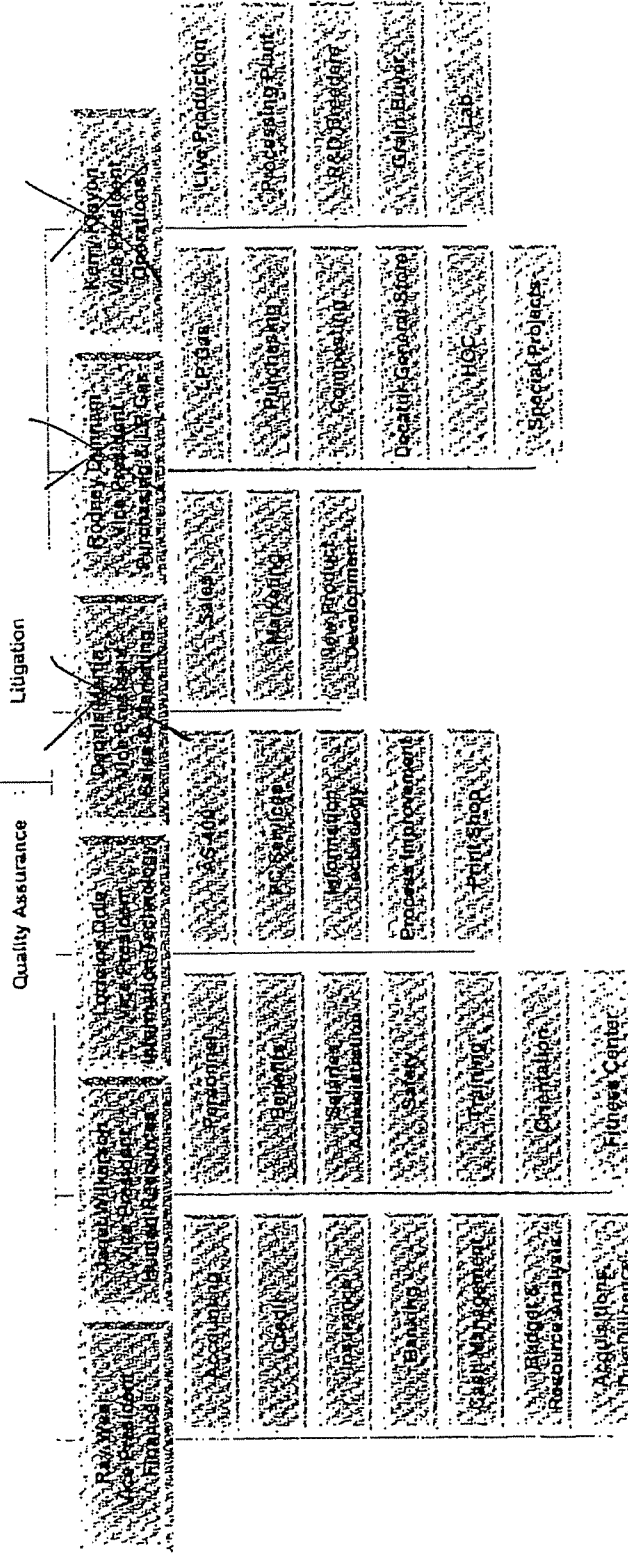
21 A. But if he had any issues with the litter, we would
22 help him.

23 Q. In what way?

24 A. We have hauled litter for people before out of the
25 watershed.

Organizational Chart

Lloyd Peterson
Chairman of the Board



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